

25 TAC, Health Services

Part 1. Texas Department of Health

Chapter 123. Respiratory Care Practitioner Certification

Amendments, §§123.3, 123.4, 123.6, 123.7, 123.9, 123.10, 123.12, new 123.16

#### PROPOSED PREAMBLE

The Texas Department of Health (department) proposes amendments to §§123.3, 123.4, 123.6, 123.7, 123.9, 123.10, 123.12 and new 123.16 concerning the Respiratory Care Practitioners Certification Program.

Specifically, the amendments concern respiratory care practitioner fees, application requirements and procedures, certificate renewal, continuing education extensions, professional and ethical standards and suspension of license for failure to pay child support. The licensing fee amendments are required as a result of revisions to the Health and Safety Code, Chapter 12, §§12.0111 and 12.0112, pursuant to House Bill 2292, 78th Legislature, 2003. Senate Bill 1152, 78th Legislature, Regular Session, directs all department administered licensing programs to participate in Texas Online, an electronic fee payment system developed and maintained by the Texas Online Authority. Wording is added that authorizes the Committee to collect subscription and convenience fees, in amounts to be determined by the Texas Online Authority, to recover costs associated with application and renewal application processing.

The proposed amendments require impartiality and nondiscrimination regarding a person's race, religion, color, gender, national origin, age, disability, sexual orientation, genetic information, or family health history; add a reactivation fee for reentering into active status and add a reinstatement fee for a license that was suspended for failure to pay child support; amend requirements for education records for applicants that are nationally certified; amend language for reactivation of a certificate; require that a practitioner shall not employ another person in the capacity of a respiratory care practitioner who does not hold a certificate or permit to practice respiratory care; and add a new section concerning suspension of license for failure to pay child support.

Jim Zukowski, Bureau Chief, Consumer Health Protection, has determined that for each of the first five years the sections will be in effect there will be a fiscal implications for state or local government as a result of enforcing or administering the sections as proposed. The estimated increase in general revenue cannot be established because the number of persons required to comply with the proposed sections cannot be determined. For all applications and renewal applications; the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

Mr. Zukowski, has also determined that for each of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections as proposed will be to ensure the appropriate regulation of respiratory therapists. There will be no impact on small businesses or micro-businesses. The cost to persons required to comply with the sections would be \$50 for failure to pay child support. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Pam K. Kaderka, Program Specialist, Respiratory Care Practitioners Certification Program, 1100 West 49th Street, Austin, Texas 78756-3183, (512)-834-6632. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section and amendments are proposed under Texas Occupations Code, §604.052, which requires the Respiratory Care Practitioners Certification Program to adopt rules, with the approval of the Texas Board of Health; and the Health and Safety Code, §12.001, that are reasonably necessary to properly perform its duties under this Act.

The new section and amendments affect the Occupations Code, Chapter 604; and Texas Administrative Code, Chapter 123.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

**[Bold Print and Brackets]** = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§123.3. Respiratory Care Practitioners Advisory Committee.

(a) - (p) (No change.)

(q) Impartiality and Nondiscrimination. The committee shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, genetic information, or family health history.

§123.4. Fees. The following fees are prescribed by the board and are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

(1) Schedule of fees for certification as a respiratory care practitioner:

(A) application (includes initial certificate) fee - \$60;

(B) for a license issued for a one year term is \$45; **[renewal fee - \$45;]**

(C) for a license issued for a two year term is \$90;

(D) **[(C)]** certificate and/or identification card replacement fee - \$20;

(E) **[(D)]** NBRC examination fee – the fee designated by the NBRC at the time of examination or reexamination;

(F) **[(E)]** certificate fee for upgrade of temporary permit - \$30;

(G) **[(F)]** written verification of certification status - \$10;

(H) **[(G)]** returned check fee - \$50;

**[(H) continuing education extension fee - \$30.; and]**

(I) annual inactive status fee - \$25; **[.]**

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(J) reinstatement fee for a license that was suspended for failure to pay child support - \$50;

(K) one to 90 days late renewal fee—one and one half times the normally required renewal fee;

(L) 91days to one year late renewal fee—two times the normally required renewal fee;

(M) For all applications and renewal applications, the department (or board) is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online; and

(N) For all applications and renewal applications, the department (or board) is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(2) (No change.)

(3) Any certificate holder whose check to the department is returned marked insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the check submitted to the department plus the returned check fee within 30 days of the date of receipt of the department's notice. Failure to comply with this requirement may be the grounds for disciplinary action, up to and including denial of the certificate holder application or the revocation of the certificate. If a certificate is issued or renewed or an application processed upon the submission of a check to the department, and if such check is later returned unpaid, the department may cancel the certificate or application if the certificate holder or applicant does not redeem the check in compliance with this section. The effect of such a cancellation shall be the same as if the application for renewal or for licensure had not been submitted. [An applicant whose check for the application fee is returned due to insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the department a money order or check for guaranteed funds in the amount of the application fee plus the returned check fee within 30 days of the date of receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.]

**[(4) An approved applicant whose check for the temporary permit or certificate fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the temporary permit or certificate fee plus the returned check fee within 30 days of the date of receipt of the department's**

notice. Otherwise, the application and the approval shall be invalid.]

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**[(5) A temporary permit holder whose check for the temporary permit extension fee is returned due to insufficient funds, account closed or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the temporary permit extension fee plus the returned check fee within 30 days of the date of the department's notice. Otherwise, the temporary permit shall not be extended, or if already extended shall be invalid.]**

**[(6) A certificate holder whose check for the renewal fee is returned due to insufficient funds, account closed or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the renewal fee plus the returned check fee within 30 days of the date of receipt of the department's notice. Otherwise, the certificate shall not be renewed. If a renewal certificate has already been issued, it shall be invalid.]**

(4) [(7)] If the department's notice, as set out in paragraph 3 **[paragraphs (3)-(6)]** of this section, is returned unclaimed, the department shall mail the notice to the applicant or certificate holder by first class mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days of the postmarked date on the second mailing, the approval or certificate issued shall be invalid. The department shall notify the applicant's or certificate holder's employer that the person has failed to comply with this section.

(5) [(8)] The administrator, on behalf of the board, shall make periodic reviews of the fee schedule and recommend any adjustments necessary to provide sufficient funds to meet the expenses of the respiratory care practitioner certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments approved by the board.

§123.6. Application Requirements and Procedures.

(a) (No change.)

(b) Required application materials.

(1) Application form. The application form shall contain:

(A) – (J) (No change.)

(2) Educational record for regular certification. The department shall issue a regular certificate to an applicant who is currently credentialed by the National Board for Respiratory Care (NBRC) and nationally certified as a Certified Respiratory Practitioner (CRT), a Certified Respiratory Therapy Technician (CRTT), or a Registered Respiratory Therapist (RRT), upon payment of the application fee, submission of the

application forms and approval by the department, the department shall issue a regular certificate to a person who is currently credentialed by the National Board for Respiratory Care (NBRC) [records]. [Applicants for a certificate, who were not certified or

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**registered in respiratory care by the NBRC on or before September 1, 1985, or a temporary permit must submit:]**

**[(A) a photocopy which is a true and exact copy of unaltered:]**

**[(i) an official diploma or official transcript indicating graduation from high school;]**

**[(ii) certificate of high school equivalency issued by the appropriate educational agency; or]**

**[(iii) official transcript from an accredited college or university indicating that the applicant received a high school diploma or equivalency or was awarded an associate, baccalaureate, or post-baccalaureate degree; and]**

**[(B) a photocopy which is a true and exact copy of an unaltered certificate of completion from a respiratory care education program. The certificate must contain:]**

**[(i) name and number of the program (exactly as listed with the educational accrediting body);]**

**[(ii) name of the graduate;]**

**[(iii) exact day and month individual is recognized as a program graduate;]**

**[(iv) accreditation statement; and]**

**[(v) signatures of the medical director, program director and administrative official; or]**

**[(C) an expected graduation statement signed by the program director. Within 30 days of the completion date noted in the statement, the department must receive either:]**

**[(i) a copy of the certificate of completion, as set out in subparagraph (B) of this paragraph; or]**

**[(ii) a statement signed by the program director indicating that the applicant officially completed the program but the certificate is not available within 30 day of the completion date.]**

(3) Education record for temporary permit. Individuals applying for a temporary permit who do not meet the requirements of subsection (b) of this section shall provide the following documents to

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the department.

(A) An expected graduation statement, including the expected date of graduation, signed by the respiratory care program director at the school.

(B) Within thirty days following the expected date of graduation, the applicant must provide to the department:

(i) a copy of the certificate of completion; or

(ii) a statement signed by the program director indicating that the applicant officially completed the program but the certificate is not available within 30 day of the completion date.

(4) [(3)] Examination results.

(A) If the applicant is making application for a temporary permit, an examination score release form shall be signed allowing the department to obtain the applicant's examination results from the NBRC, or other agency administering the examination prescribed by the board.

(B) If an applicant for a regular certificate is:

(i) recognized as certified respiratory therapist or registered respiratory therapist by the NBRC at the time of application, a photocopy of the certificate issued by NBRC shall be submitted in lieu of examination results; or

(ii) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of the applicant's examination results, the application shall be disapproved.

(5) [4] Employment/experience documentation report form. Persons applying for any certificate or permit who are not recognized as a certified respiratory therapist or registered respiratory therapist by the NBRC and who are licensed, registered, or otherwise regulated in another state, territory, or country at the time of application must submit with their applications a properly completed employment/experience

documentation report form signed by their medical director as defined in §123.2 of this title (relating to Definitions), attesting that the applicant is currently practicing, or has practiced respiratory care within the 12-month period immediately preceding application to the department.

(6) [5] Medical direction requirement. If the applicant is practicing respiratory care in Texas at the time of application to the department, the applicant shall provide on the application form the

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signature and license number of the qualified medical director as defined in §123.2 of this title (relating to Definitions) or other Texas licensed physician directing the provision of respiratory care services.

(c) – (d) (No change.)

(e) Application approval.

(1) The department [administrator] shall be responsible for reviewing all applications.

(2) The department [administrator] shall approve all applications which are in compliance with subsections (a)-(c) of this section and which properly document applicant eligibility, unless the application is disapproved under the provisions of subsection (f) of this section.

(f) Disapproved applications.

(1) – (2) (No change.)

(3) An applicant whose application has been disapproved under paragraph (1)(E) and (F) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication. The date of disapproval is the effective date of a disapproval order signed by the commissioner of health or the commissioner's designee.

### §123.7. Types of Certificates and Temporary Permits and Applicant Eligibility.

(a) (No change.)

(b) Issuance of certificates and permits.

(1) (No change.)

(2) Certificates issued within three [six] months of the practitioner's birth month shall be issued for



the next full renewal period [that period of time plus the next full year]. Certificates shall expire on the last day of the practitioner's birth month.

(c) – (d) (No change.)

#### §123.9. Certificate Renewal.

(a) General. Except as provided by subsection (b) of this section, a practitioner shall renew the

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certificate biennially on or before the last day of the practitioner's birth month. **[annually. A practitioner shall renew the certificate annually.]**

(1) – (4) (No change.)

(b)– (h) (No change.)

#### §123.10. Continuing Education Requirements.

(a) – (c) (No change.)

(d) Reporting of continuing education. Each practitioner shall be responsible for reporting to the department the continuing education activities completed.

(1) A practitioner shall report the number of hours of continuing education completed during the renewal period. If requested by the department, each practitioner shall submit proof of completion of the required continuing education activity to the department at the time of certificate renewal, or at other times as directed by the department. **[However, if an extension has been granted in accordance with subsection (f) of this section, the practitioner shall file the continuing education hours immediately following completion of the activity.]**

(2) (No change.)

(e) Activities unacceptable as continuing education. The department may not grant continuing education credit to any practitioner for:

(1) – (4) (No change.)

**[(5) any continuing education activity completed before or after the renewal year for which the continuing education credit is submitted except as allowed under subsection (f)(1) of this**

section;]

(5) [(6)] activities which have been completed more than once during the continuing education period.

(f) Failure to complete required continuing education.

**[(1) A practitioner who has failed to complete the requirements for continuing education as specified in subsection (a) of this section may be granted up to a 90-day extension to a reporting period if the renewal fee and continuing education extension fee is paid on or prior to the expiration date. The 90-day extension is the maximum that may be granted and there will be no exceptions.]**

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**[(A)Following the receipt of the current renewal form, renewal fee and continuing education extension fee, the department shall issue identification cards valid for a 90-day period beginning with the day following the expiration date of the practitioner's annual certificate and a written notice that the continuing education period has been extended.]**

**[(B) If the deficiency is made up prior to the end of the extension, the department will notify the practitioner that the next reporting period commences on the day following the completion of the credits to correct the deficiency. The new reporting period shall end on the next renewal date. In other words, whenever an extension is granted, the time is borrowed from the next reporting period.]**

**[(C) If an excess number of credits were earned during an extension, the excess will be credited toward the new reporting period.]**

**[(D) A practitioner may not receive another extension at the end of the 90-day extension.]**

**[(2)] A practitioner who has failed to complete the requirements for continuing education as specified in subsection (a) of this section [and who has not completed the continuing education requirement during the 90-day extension] shall return the certificate and identification cards to the department and shall not advertise or represent himself or herself as a respiratory care practitioner in any manner. The person may renew the certificate or reapply for a new certificate in accordance with §123.9(d) of this title (relating to Certificate Renewal).**

(g) Other miscellaneous provisions.

(1) – (4) (No change.)

(5) No continuing education hours may be carried over from one renewal period to another renewal period **[unless the hours were earned during a continuing education extension as set out in subsection (f) of this section.]**

§123.12. Professional and Ethical Standards. The purpose of this section shall be to establish the standards of professional and ethical conduct required of a practitioner pursuant to the Act, §604.201 (b)(4).

(1) Professional representation and responsibilities.

(A) – (P) (No change.)

(Q) A practitioner shall not employ another person in the capacity of a respiratory care

### **§§123.12, 123.16**

practitioner who does not hold a certificate or permit to practice respiratory care.

(2) – (6) (No change.)

Legend: (New Section)

Regular Print = Proposed new language.

§123.16. Suspension of License Relating to Child Support and Child Custody.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if the Respiratory Care Practitioner Certification has issued a certificate to the person named in the order. If a license has been issued the department shall:

(1) record the suspension of the license in the departments records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The department will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order

suspending a license issued under the Texas Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the standard renewal procedures in the Respiratory Care Practitioner Certification Act, Texas Occupations Code, §604.153, and §604.157, of this title (relating to Issuance of Renewal Certificate and Renewal of Temporary Permit). However, the license will not be renewed until the requirements of subsections (g) and (h) of this section are met.

### **§123.16**

(f) An individual who continues to use the titles "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," "respiratory therapy technician," or the letters "RCP" or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the department.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the department shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee as referred in §123.4 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.